

BIENERT, MILLER & KATZMAN

A Professional Law Corporation

June 20, 2018

MEMO ENDORSED

VIA ECF

The Honorable P. Kevin Castel  
United States District Court  
Southern District of New York  
500 Pearl Street  
New York, NY, 10007-1312

Re: *United States v. Bergstein et al*, Case No. 16-cr-746-PKC-1

Dear Judge Castel:

We write in response to the government's letter submission of earlier today in which, among other things, the government states that it does not intend to produce Albert Hallac at the *Fatico* hearing scheduled to commence June 25, 2018. *See* Dkt. 408.

In our letter requesting a *Fatico* hearing, we asked that the government be directed to produce Hallac to testify at the *Fatico* hearing and to produce certain documents. *See* Dkt. 387 at 3-4. The Court granted our request for a *Fatico* hearing and directed the parties to submit briefs laying out evidence not in the trial record they would reply upon to prove loss, and directed the government to respond to the defense's requests regarding Hallac. *See* Dkt. 392. The government then filed a letter submission in which it wrote in a footnote that "[i]n the event the Court is inclined to grant Bergstein's request to question Hallac at the [*Fatico*] hearing, the Government respectfully requests that the Court inform the parties sufficiently in advance of the hearing so that the Government can secure Hallac's presence in New York and prepare him to testify." *See* Dkt. 397.

As the Court is aware, Hallac is a government cooperator who testified against Mr. Bergstein at trial, and who has pled guilty to the same and related crimes. As we have outlined in our motion requesting a *Fatico* hearing and our sentencing memorandum, Hallac is in possession of information relevant to the amount of loss for Guidelines, restitution, and forfeiture purposes. Accordingly, because Hallac is also uniquely under the control of the government, we respectfully request that the Court order the government to produce Hallac at the *Fatico* hearing on Monday June 25 (and Tuesday June 26 if necessary).

Respectfully Submitted,

BIENERT, MILLER & KATZMAN, PLC

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By: /s/ William F. Johnson  
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/s/ Brian R. Michael  
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*I will hear the defendant on the issue and am prepared, if persuaded, to continue the hearing to allow the witness to testify. As of now, however, I am not persuaded.*  
**SO ORDERED.**  
*[Signature]*  
USDJ  
6-21-18

USDC SDNY  
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